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No. 231

In the Supreme Court of the United States

OCTOBER TERM, 1930

ROBERT H. LUCAS, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

CHICAGO RAILWAY EQUIPMENT COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1930

No. ——

ROBERT H. LUCAS, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

CHICAGO RAILWAY EQUIPMENT COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of Robert H. Lucas, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit entered in the above cause on March 27, 1930 (R. 181), reversing in part a decision of the United States Board of Tax Appeals. (R. 163.)

QUESTION PRESENTED

Whether the statutory period of limitation for the assessment of income taxes for 1918 was extended by a waiver executed after such period had

expired and after a deficiency notice had been sent to the taxpayer and the taxpayer had filed an appeal with the Board of Tax Appeals.

STATEMENT

Respondent's income tax return for 1918 was filed June 16, 1919, and the five-year period of limitation for assessment and collection fixed by Section 277 (a) (2) of the Revenue Act of 1924 (*infra*, pp. 5–6) expired June 16, 1924. This limitation is qualified by Section 278 (d) of the same Act (*infra*, p. 6), which permits collection of assessments made after June 2, 1924, within six years after the date of assessment. A notice of deficiency in tax for 1918 was mailed to respondent on March 14, 1925, and respondent filed an appeal with the Board of Tax Appeals on May 6, 1925. On December 7, 1925, the Solicitor of Internal Revenue sent respondent a letter in which he stated that "as it is impossible at this time to determine whether the case [before the Board of Tax Appeals] will be disposed of by the Board prior to the expiration of your waiver," a further waiver should be executed, and on December 10, 1925, respondent executed a waiver extending the time for making assessment until December 31, 1926. (R. 153.) The only waiver introduced in evidence before the Board was that of December 10, 1925. On the other hand, no evidence was introduced in contradiction of the reference to a prior waiver contained in the Solicitor's letter. (R. 96–97.)

The Board of Tax Appeals held that the waiver of December 10, 1925, was valid. (R. 161–164.) The Circuit Court of Appeals for the Seventh Circuit held that it was invalid because executed after the expiration of the statute of limitations. (R. 177–178, 181.)

STATUTES INVOLVED

The pertinent statutory provisions are set out in the Appendix.

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred in holding that the waiver of the period of limitation for assessing the 1918 taxes was invalid.

REASONS FOR GRANTING THE WRIT

While the waiver in question covered taxes for both 1917 and 1918, review is sought only as to the 1918 taxes because of the similarity of the question in connection therewith to those involved in *Charles H. Stange* v. *United States,* No. 23, writ of certiorari granted March 3, 1930; *Annette Aiken, Administratrix of the Estate of Friend M. Aiken, Deceased,* v. *Robert H. Lucas, Commissioner of Internal Revenue,* No. 69, writ of certiorari granted May 5, 1930; and *W. P. Brown & Sons Lumber Company* v. *Robert H. Lucas, Commissioner of Internal Revenue,* No. 115, writ of certiorari granted June 2, 1930. Writs of certiorari in those cases were not opposed by the Government. To

preserve the rights of the Government pending decision of those cases, the writ should issue in the instant case.

Wherefore, it is respectfully submitted that this petition should be granted.

THOMAS D. THACHER,
Solicitor General.

JUNE, 1930.

APPENDIX

STATUTES INVOLVED

Revenue Act of 1924, c. 234, 43 Stat. 253, 299, 300, 301:

> SEC. 277. (a) Except as provided in section 278 * * *—
>
> * * * * *
>
> (2) The amount of income, excess-profits, and war-profits taxes imposed by * * * the Revenue Act of 1917, the Revenue Act of 1918, and by any such Act as amended, shall be assessed within five years after the return was filed, and no proceeding in court for the collection of such taxes shall be begun after the expiration of such period.
>
> * * * * *
>
> (b) The period within which an assessment is required to be made by subdivision (a) of this section in respect of any deficiency shall be extended (1) by 60 days if a notice of such deficiency has been mailed to the taxpayer under subdivision (a) of section 274 and no appeal has been filed with the Board of Tax Appeals, or, (2) if an appeal has been filed, then by the number of days between the date of the mailing of such notice and the date of the final decision by the Board. (U. S. C., Title 26, Sec. 1057.)

SEC. 278. (c) Where both the Commissioner and the taxpayer have consented in writing to the assessment of the tax after the time prescribed in section 277 for its assessment, the tax may be assessed at any time prior to the expiration of the period agreed upon. (U. S. C., Title 26, Sec. 1060.)

(d) Where the assessment of the tax is made within the period prescribed in section 277 or in this section, such tax may be collected by distraint or by a proceeding in court, begun within six years after the assessment of the tax. Nothing in this Act shall be construed as preventing the beginning, without assessment, of a proceeding in court for the collection of the tax at any time before the expiration of the period within which an assessment may be made. (U. S. C., Title 26, Sec. 1061.)

SEC. 280. If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any income, war-profits, or excess-profits tax imposed by * * * the Revenue Act of 1917, the Revenue Act of 1918 * * * or by any such Act as amended, the amount which should be assessed (whether as deficiency or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of

delinquency in payment after notice and demand) as in the case of the taxes imposed by this title, except as otherwise provided in section 277. (U. S. C., Title 26, Sec. 1064.)

U. S. GOVERNMENT PRINTING OFFICE : 1930